

ESTTA Tracking number: **ESTTA617739**

Filing date: **07/25/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	Internet Shops, Inc.		
Entity	Corporation	Citizenship	Georgia
Address	103 Ashton Farms Drive Canton, GA 30115 UNITED STATES		
Attorney information	Robert M. Sneed, Jr. McConnell & Sneed, LLC 990 Hammond Drive, Suite 840 Atlanta, GA 30328 UNITED STATES rms@mcconnellsneed.com Phone:404-220-9997		

Applicant Information

Application No	86183399	Publication date	07/01/2014
Opposition Filing Date	07/25/2014	Opposition Period Ends	07/31/2014
Applicant	J.R. Mats, Inc. 1519 McDaniel Drive West Chester, PA 193807037 UNITED STATES		

Goods/Services Affected by Opposition

Class 028. First Use: 2008/07/03 First Use In Commerce: 2008/07/03
All goods and services in the class are opposed, namely: golf driving practice mats

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
The mark is merely descriptive	Trademark Act section 2(e)(1)
Other	The mark is merely generic - Trademark Act section 4(f)

Mark Cited by Opposer as Basis for Opposition

U.S. Application/ Registration No.	NONE	Application Date	NONE
Registration Date	NONE		
Word Mark	Opposer has used phrases such as #DIVOT ACTION# in commerce dating back to as early as 2005, prior to the alleged date of first used by Applicant. Further, other retailers and manufacturers have been using the same term prior to the date of alleged first use by Applicant.		

Goods/Services	Golf training mats
----------------	--------------------

Related Proceedings	Opposition No. 91210353
---------------------	-------------------------

Attachments	Notice of Opposition - TRUE DIVOT ACTION.pdf(126730 bytes)
-------------	---

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Robert M. Sneed, Jr./
Name	Robert M. Sneed, Jr.
Date	07/25/2014

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

INTERNET SHOPS, INC.,)	Opposition No.: _____
)	
Opposer,)	Serial No.: 86183399
)	
v.)	Mark: TRUE DIVOT ACTION
)	
J.R. MATS, INC.,)	Filed: February 4, 2014
)	Published: July 1, 2014
Applicant.)	

NOTICE OF OPPOSITION

Internet Shops, Inc., a corporation duly organized and existing under the laws of the State of Georgia, located at 103 Ashton Farms Drive, Canton, Georgia 30115 (hereinafter referred to as “Opposer”), believing it will be damaged by registration hereby opposes the above-identified Application Serial No. 86183399 for TRUE DIVOT ACTION.

The grounds are as follows:

COUNT I – LIKELIHOOD OF CONFUSION

1. Opposer has long prior to Applicant’s filing date and, on information and belief, long prior to any use by Applicant of the mark shown in its Application, used certain phrases that are substantially similar to the mark applied for, TRUE DIVOT ACTION in some fashion for its various retail golf practice mats and accessories including through its on-line retail store services offered over the internet through various websites.
2. Opposer has used phrases such as “Divot Action” in commerce dating back to as early as 2005 and Opposer has made a substantial investment in advertising and in promoting its goods and services using the phrase “Divot Action” to describe its

golf training mats. Opposer has extensively used, advertised, promoted and offered Opposer's goods and services in commerce utilizing the phrase "Divot Action" and as a result customers and the public in general have come to know and recognize such phrase and to uniquely associate the phrase with Opposer and the goods and services sold and rendered by Opposer. Opposer has built extensive goodwill in connection with the sale of products and the rendering of services under Opposer's phrase.

3. Opposer's phrase is inherently distinctive and/or has acquired secondary meaning as a result of Opposer's long and extensive use of said phrase in commerce.
4. Applicant is now attempting to hijack the extensive goodwill that has been established associated with Opposer's use of the phrase "Divot Action" by adding a single word to the phrase and filing the instant application. The word "True" included in Opposer's Mark is one of the most commonly used English words and its presence or absence is of little note to consumers. The Applicant's registration and use of the proposed Mark would likely create confusion, mistake, or deception in the minds of prospective purchasers as to the origin or source of the Opposer's goods associated with the phrase "Divot Action."
5. On information and belief, on February 4, 2014, Applicant filed Application Serial No. 86183399 for the mark TRUE DIVOT ACTION for golf driving mats, Class 28, alleging first use in commerce July 3, 2008. Said Application was published for opposition in the Official Gazette on July 1, 2014.

6. On information and belief, neither Applicant, a related company nor a licensee of Applicant has used the mark identified in its Application for any goods or services.
7. On information and belief, neither Applicant, a related company nor a licensee of Applicant has used the mark identified in its Application for any of the goods listed in its Application.
8. On information and belief, neither Applicant, a related company nor a licensee of Applicant used the mark identified in its Application for any of the goods listed in its Application prior to February 4, 2014.
9. On information and belief, Applicant has committed fraud in the filing of Application Serial No. 86183399 for TRUE DIVOT ACTION.
10. The mark sought to be registered by Applicant is substantially similar to the phrase “Divot Action” already in use in commerce by Opposer as well as other marks used by other online retail golf training aid companies.
11. The goods covered by Applicant’s Application are identical and/or highly related to Opposer’s goods and services sold and rendered under Opposer’s marks.
12. In view of the fact that the marks of Applicant and Opposer are identical and/or substantially identical and in view of the related nature of the goods of Applicant and the goods and services of Opposer, it is alleged that the mark for which Applicant seeks registration so resembles Opposer’s marks as previously and currently used in the United States, and not abandoned, so as to be likely to cause confusion, or to cause mistake, or to deceive resulting in damage and injury to Opposer and its reputation.

13. Opposer, upon information and belief, avers that its customers, and the public generally, are likely to be confused, mistaken or deceived as to the origin and sponsorship of Applicant's proposed goods to be promoted and sold under the mark shown in Applicant's Application and misled into believing that such goods emanate from, or are licensed by or are in some way directly or indirectly associated with Opposer, thereby causing damage and injury to Opposer, within the meaning of Section 2(d) of the Lanham Act, 15 U.S.C. Sec. 1052(d).
14. If Applicant is granted a registration for the mark herein opposed, it would obtain thereby at least a prima facie exclusive right to use its registered mark. Such registration would be a source of damage and injury to Opposer.

COUNT II – TRUE DIVOT ACTION IS DESCRIPTIVE

15. Applicant's designation TRUE DIVOT ACTION is merely descriptive of Applicant's golf training mat, the term "True Divot Action," or some variation thereof, being commonly used, both generally, and in the golf training mat industry, to indicate a golf training mat that maintains a true swing-like feel simulating a divot to its use and operation.
16. The designation TRUE DIVOT ACTION merely describes golf training mats that are produced by Applicant. Therefore, registration of the TRUE DIVOT ACTION designation is prohibited under Section 2(e)(1) of the Lanham Act, 15 U.S.C. Sec. 1052(e)(1).
17. Further, if Applicant's registration is granted, Opposer will be unable to use the descriptive term "Divot Action" to describe its products and services by using such a commonly recognized indicator of golf training mats.

18. Applicant's designation TRUE DIVOT ACTION has not acquired secondary meaning and is not entitled to registration under Section 2(f), 15 U.S.C. Sec. 1052(f).

COUNT III – TRUE DIVOT ACTION IS GENERIC

19. The opposed designation TRUE DIVOT ACTION is a commonly used laudatory term in certain industries, including the golf training mat industry. The term is incapable of distinguishing Applicant's goods and is generic. Therefore, Applicant should be denied registration of TRUE DIVOT ACTION under Sec. 23 of the Lanham Act, 15 U.S.C. Sec. 1091.
20. Applicant's designation TRUE DIVOT ACTION has not acquired secondary meaning and is not entitled to registration under Section 2(f), 15 U.S.C. Sec. 1052(f).
21. Further, at this time, Opposer has insufficient information and knowledge upon which to form a belief as to the Applicant's bona fide use the mark in connection with the goods identified in its Application and reserves the right to conduct discovery with respect to Applicant's bona fide use of the mark identified in its Application for all of the goods listed in its Application and to oppose registration on the ground of lack of bona fide intent if the evidence warrants.

WHEREFORE, Opposer believes that it will be damaged by registration of U.S. Application Serial No. 86183399 and therefore respectfully requests that said application be rejected and registration of the mark therein sought for the goods therein specified be denied and refused and that this Opposition be sustained in favor of Opposer, and for such other relief as may be deemed just and proper

Respectfully submitted this 25th day of July, 2014.

McCONNELL & SNEED, LLC

/s/ Robert M. Sneed, Jr.

Robert M. Sneed, Jr.
Georgia Bar No. 665608
Attorneys for Opposer

990 Hammond Dr., Suite 840
Atlanta, Georgia 30328
(404) 665-3090 tel
(404) 665-3476 fax
rms@mcconnellsneed.com

Certificate of Electronic Transmission

It is hereby certified that a true copy of the foregoing Notice of Opposition was filed electronically with ESTTA at the United States Patent and Trademark Office on the date shown below

/s/ Robert M. Sneed, Jr.

Date: July 25, 2014

Robert M. Sneed, Jr., Esq.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing **NOTICE OF OPPOSITION** this day been served upon the parties by depositing same in the United States Mail, proper postage prepaid, addressed as follows:

John P. Sullivan, Esq.
Volpe and Koenig, P.C.
United Plaza , Suite 1600
30 S. 17th Street
Philadelphia, PA 19103-4009

This 25th day of July, 2014.

McCONNELL & SNEED, LLC

/s/ Robert M. Sneed, Jr.

Robert M. Sneed, Jr.
Georgia Bar No. 665608
Attorneys for Opposer

990 Hammond Dr., Suite 840
Atlanta, Georgia 30328
(404) 665-3090 tel
(404) 665-3476 fax
rms@mcconnellsneed.com